

791. In the state of the market at that time, Rey shared the expert's opinion that there was not enough revenue for a sixth station and that "nobody will finance a proposition that is not able to pay for itself." Tr.

781. At the time of Rey's 1990 meeting with Conant, Judge Marcus had imposed a status quo order pending hearing on Rainbow's preliminary injunction request.

Press Exh. 16. Joseph Rey explained that they did not then know when the matter would be resolved, but "[w]e all thought, and when I say 'we,' I think Defendants did too, we all thought it was going to be fairly quick."

Tr. 759.

46. When he testified on January 11, 1991 in the preliminary injunction hearing in the tower litigation that Howard Conant "has told me that if Channel 18 gets on that tower the likelihood is that he will not finance the station," Rey's testimony did not reflect a specific statement from Howard Conant, Tr. 796, but it was accurate and truthful in substance, Tr. 913-915, 921-922. It was "in essence" what Conant had told him, Tr. 913, in that it accurately reflected the situation as Rey believed it would unfold were Press to go on the tower at that time:

. . . Mr Conant told me that he was relying on my opinion whether this was a worthwhile business. If

I were to have gone to Howard the very next day [and said], 'Judge Marcus has denied the injunction. We are going to be relegated as a sixth station. I really believe that this is not going to pay for itself,' I think Howard would say, 'Well, Joe, then let's not do it.'

Tr 796, 913.

47. Rey knew that Conant "was still on board," did "not subscrib[e] to" Rey's view that "the whole thing was dead," and thought Rey's pessimism "was premature" since the preliminary injunction had not been heard or decided," Tr. 753-754. However, Rey also knew that Conant relied on Rey's "opinion as a broadcaster" and believed that if he were to tell Conant, "'Howard, this is not worth doing,' he would have retracted [his commitment] immediately. He is not a broadcaster. He's a businessman. And he had made that clear to me; that a big element here was, you know, how I saw it, my opinion of the project." Tr. 754:

Howard was relying on me. There is a big element of trust between Howard and myself regarding what I thought was viable or [thought was not] viable. If I were to go to Howard . . . the day after this hearing and the judge comes back and says, 'okay, injunction denied,' I would have gone back to Howard the very next day . . . and said, 'Howard, it's been denied, I don't think this is worth a penny,' the likelihood [is] that he would say, 'Joe, what are we doing here then?'

Tr. 795, 914-915.

48. On January 22, 1991, when Rainbow prepared the fifth extension request filed on January 25, 1991, it

reported in Exhibit 1 that the "Motion for Preliminary Injunction was heard on January 11, 14 and 16, 1991 and is scheduled to conclude on January 23, 1991, with a decision anticipated shortly thereafter," and said that "Rainbow anticipates that its exclusive right to the use of the tower aperture will be recognized by the District Court. Rainbow is ready, willing and able to proceed with construction upon a ruling from the District Court and anticipates completion of construction within 24 months of a favorable Court action." Joint Exh. 2, page 3. Rainbow did not report any change in its financial ability to go forward because there had been no change; Rainbow was always financially qualified, Tr. 938.

49. Progress After Marcus Decision. In fact, the Court did not rule until June 6, 1991, at which time it denied the preliminary injunction. Stip. 16. By that time, however, market conditions had changed drastically, as Rey reported to Conant in their next meeting in the summer of 1991. Rainbow Exh, 4, page 1; Tr. 675, 754, 797. Although he told Conant the Preliminary Injunction had been denied, Rey testified that "things had changed, . . . had evolved over the last seven months, and I was not-- nowhere near as pessimistic as I was seven months earlier," Tr. 754-755, even though he knew that it would

take much more time and money for a sixth station to become economically viable, which has proven to be the case, Tr. 990-991.

50. The lifting of the status quo order freed Rainbow to go forward and because of the intervening change in the market situation, Rey had decided to go forward regardless of the outcome of the preliminary injunction motion. Tr. 993-994. A number of factors made him less pessimistic: "There was a big uplift after the Gulf War. There was talk about a new network emerging in the near future, and the clincher was learning that Nielsen was going to meter their Orlando market in the very near future." Tr. 755. Rey told Conant "that we were free to go ahead, and that I thought that it was worthwhile doing it." Tr. 754-755.

51. As Howard Conant recalled the conversation, "Joe indicated that conditions in the Orlando television market had improved both economically and because the market was to be metered by the Nielsen Company, an extremely important advantage for a new independent television station," Rainbow Exh, 4, page 1, because "it would prove a more accurate indication of audience than when people merely fill out the written forms as to what stations they were listening to," Tr. 675.

52. As Joseph Rey explained at the hearing, new stations fare very poorly under diary methodology because, as a number of studies have shown, viewers' diaries are not filled out "religiously as viewing is done, but rather they are filled out after the fact. And the element of memory recall is key." Tr. 755. While established stations fare well under the diary system, "the new stations are not top of mind, if you will, and they are not listed" when they are watched, so "ratings improve dramatically" for such stations under the meter system, because it records what people watch rather than what they recall. Tr. 755.

53. Rey said that when metering was introduced in Miami, Station WDZL "went from a three share to an eight share overnight. It was dramatic for a new station, especially as it goes to secondary and tertiary TV sets." Tr. 755-756. Because of that experience, Rey said, Howard Conant understood the significance of the meters and "[h]e was ready to go ahead." Tr. 756. Conant testified that he "was pleased to hear about the improvement, and I reiterated my pledge to finance the station in that discussion." Rainbow Exh. 4, page 1. Conant said that Rey also told him "Rainbow was still considering the possibility of developing equity financing, and I recall tell-

ing him that if he was unsuccessful in that pursuit, I stood ready and willing to live up to my commitment." Rainbow Exh. 4, page 1.

54. Rey first learned about the metering plan from a Nielsen representative in late May or early June 1991, either just before or just after the Preliminary Injunction ruling. Tr. 756, 798. Metering a market takes "a good year," Tr. 992, and Rey understood that the Orlando meters were to go in in summer or fall of 1992 and be in use for the November 1992 rating period month, Tr. 798-799. They did in fact go in either late in 1992 or early in 1993. Tr. 992.

55. On June 25, 1991, Rainbow filed its sixth extension request, in which it reported denial of the preliminary injunction and reported that it had put construction in train and would "commence operation prior to December 31, 1992, as it previously informed the Commission." Joint Exhibit 3, page 3. Rainbow's financial commitment from Howard Conant remained intact throughout the 1991-1993 period, as it was at all times. Tr. 938; Finding 35. In fact, Conant was prepared to finance the station on a bridge basis if the limited partnership was not completed. Rainbow Exh. 4, page 1; Finding 36.

Issue 3

56. Issue 3 seeks to determine the veracity of Rainbow's representations in Exhibit 1 to its January 25, 1991 and June 25, 1991 extension requests concerning the status of Rainbow's October 1990 suit against Guy Gannett Publishing Company (Gannett), owner of Rainbow's transmitter tower, Stip. 12, and its effect upon station construction.

57. Tower Site and Lease. Rainbow's proposed antenna site was Gannett's Bithlo tower, which Gannett told Rainbow had only two slots for television antennas, one at 1400 feet and the one proposed by Rainbow at 1500 feet. Tr. 765. In 1985 negotiations, Gannett led Rainbow to believe that it was also negotiating for lease of Rainbow's intended site to another station and would lease the site on a first come first served basis. Tr. 947. Rainbow knew from an analysis by its communications counsel that Press' existing Clermont station was trying to enter the Orlando market through a channel swap but that the only way it could possibly meet the Commission's principal city coverage requirement would be to locate its antenna in Rainbow's 1500 foot Bithlo slot. Tr. 765.

58. Accordingly, in order to preserve its slot, Rainbow entered into a 15 year lease for its antenna

tower on January 6, 1986 and began paying rent to Gannett despite the fact that the licensing proceeding was still in litigation. Rainbow Exh. 6; Tr. 947. Exhibit C to the lease as signed reflected two distinct and separate locations for television stations on the tower, one at 1500 feet and one at 1400 feet, Rainbow Exh. 6, page 31, and Rainbow contracted for exclusive use of the 1500 foot slot, Tr. 765.

59. Preconstruction Efforts. While Rainbow's construction financing could not be drawn on by the terms of the commitment from Howard Conant until the applicant had a free and clear construction permit, Tr. 730, efforts to work with Gannett on the transmitter building began as early as late 1989, when Gannett's representative, Rick Edwards, advised Rainbow of its proposal to build a single building with three rooms to house Rainbow, a future FM station and a future television station, and solicited specific information on the transmitter room Rainbow would require and how its antenna would be mounted. Tr. 727-728. On January 30, 1990, Joseph Rey wrote to Edwards asking for specified additional information required in order for Rainbow to respond to Edwards' questions. Rainbow Exh. 7, page 1; Tr. 727. Edwards never responded. Tr. 727.

60. After release of the Supreme Court decision in May 1990, Rainbow expanded its preconstruction efforts, working on equipment selection and the planning for its transmitter building. Tr. 726. Believing that denial of the then pending petition for rehearing was a foregone conclusion, Tr. 729, Joseph Rey had discussions during July and August with Rick Edwards regarding construction of the three room transmitter building, Tr. 731, but still received no response to his January 30 letter and on August 10, 1990 he wrote again to Edwards. Rainbow Exh. 7, page 2.

61. Rey told Edwards that Rainbow had "a clear path to construct the facility and it is our desire to proceed as quickly as possible," Rainbow Exh. 7, page 2. He also said that "[s]ince we cannot afford to wait any longer" for an answer from Edwards to Rey's January 30 letter dealing with the originally planned single three room transmitter building, "we have decided to construct our own transmitter building." Rainbow Exh. 7, page 2; Tr. 726-728. Since Rainbow was entitled under the Lease Agreement to select its own contractor and engineer/architect, subject to Gannett's approval, Rey identified those persons and enclosed the preliminary construction plans. Rainbow Exh. 7, page 2; Tr. 728.

62. By letter of August 20, 1990 from Edwards, Rey learned for the first time that Gannett had prepared blueprints for the single three room building in June. Joint Exh. 3, page 4. On August 24, 1990, Rey again wrote to Edwards, acknowledging receipt of the blueprints and expressing surprise that despite their June 12, 1990 date, "they were not shown to me until this week." Rainbow Exh. 7, page 8. The letter reiterated the lack of an answer to Rey's January 30 letter, without which Rainbow could not proceed with the three room building, said that "TIME IS OF THE ESSENCE, and we need an immediate response" and requested a meeting of the two men and the lawyers and engineers for Rainbow and Gannett so they could resolve the outstanding matters and set a timetable for completing design and constructing the building. Rainbow Exh. 7, page 8.

63. The blueprints made it clear to Rey that Edwards "had not been entirely forthcoming" about the proposed construction because they reflected that one of the rooms which had been discussed as being for a future tenant was in fact preplanned for Press, which was to operate from "within the antenna aperture of Rainbow's lease antenna space." Tr. 731. Edwards finally admitted to

Rey that Gannett planned to enter into a lease with Press. Tr. 731, 766.

64. While Rainbow had previously been aware that Gannett was talking to Press, Rainbow had been asked for and had denied consent to any lease affecting Rainbow's aperture in 1988 and again in 1989. Tr. 766-767. Neither then nor at any other time had Press said it was going to sign a lease without Rainbow's consent and while Rainbow had sought a legal opinion, it was told that it had no legal recourse "until there was a specific action on behalf of the landlord" to rent space in Rainbow's aperture to someone else. Tr. 766-767.

65. The Supreme Court's expected denial of rehearing issued on August 30, 1990. Stip. 10. Joseph Rey continued to meet with Rick Edwards to work on the plans, as did Doug Holland, Rainbow's engineer, Rainbow Exh. 7, pages 9, 10. On September 13, 1990 the three men met at Edwards' office "and it was agreed that Mr. Edwards would provide Rainbow with a detailed bid based on Gannett's proposed plans so that Rainbow could analyze and determine whether it would select Gannett's proposed contractor or choose its own." Joint Exhibit 3, page 4.

66. At this point the "lawyers got involved," Tr. 731, and in an October 2, 1990 letter to Gannett Vice

President James Baker, Rainbow counsel Malcolm Fromberg reported that while Rainbow was going forward with Gannett's people on the construction planning, he had not heard as promised from Gannett counsel about the outstanding matters in dispute. Rainbow Exh. 7, page 10.

67. Fromberg reiterated Rainbow's position that it was entitled to exclusive occupancy of the top antenna aperture on Gannett's tower and said that "[a]ny attempt" by Gannett "to create a higher slot above that reserved by Rainbow Broadcasting, or to place additional antennas within the aperture of the slot reserved by Rainbow" would be "not only a breach of contract, but also . . . fraud in the inducement," and would "result in litigation." Rainbow Exh. 7, page 10, 11.

68. In an October 19, 1990 response, Gannett counsel John Flaherty told Fromberg that Gannett would consider Rainbow in breach of the contract unless Rainbow agreed in writing by November 1, 1990 to take the top slot, for which it was already paying rent on an exclusive basis, on a nonexclusive basis. Rainbow Exh. 7, page 12, 14. By letter of the same date to Gannett Vice President James Baker, Fromberg gave the demanded written promise to use the top slot, but reiterated that lease of part of that slot to Press "runs contrary to the clear

language of the Lease Agreement and the clear intent of the parties." Rainbow Exh. 7, page 15. Fromberg's letter also attempted to advance the matter of construction by confirming which room Rainbow would use in the transmitter building and other construction details. Rainbow Exh. 7, pages 15-16.

69. Tower Litigation and Status Quo Order. Given Press' threats "to cancel our lease under some legal interpretation," Tr. 731, and Rainbow's understanding from engineering experts that shared use of the Rainbow antenna slot was precluded for reasons of interference, Tr. 975, Rainbow filed suit in Florida state court on November 2, 1990, Press Exh. 9; Tr. 731. The suit, which included a request for injunctive relief, Stip. 12, was not intended to prevent Gannett from renting the 1400 foot slot to Press or anyone else, but only to preserve the 1500 foot slot Rainbow had leased and paid rent for. Tr. 765.

70. Despite the suit, Rainbow continued to pursue the effort to construct. On November 5, 1990, Rainbow engineer Doug Holland again requested the promised Gannett bid, which had not been forthcoming. Joint Exh. 3, page 4.

71. Shortly after the suit was filed, Gannett removed it to federal court and hearings were held on a preliminary injunction request, pending which Judge Stanley Marcus ordered retention of the status quo. Tr. 731-732. That ruling was initially entered orally by stipulation at a hearing on November 27, 1990, Press Exh. 16, upon Rainbow counsel's agreement to a stipulation "if that included the fact that [Gannett] wouldn't allow any construction to take place on the antenna prior to a lease," Press Exh. 16, page 10.

70. Reduced to writing in a November 30, 1990 Order on Status Conference, the order recited that "Defendants have agreed to preserve the status quo between now and the date of the Preliminary Injunction hearing and the Court hereby orders Defendants to preserve said status quo and to not sign or consummate any agreement or lease with PRESS and/or CHANNEL 18 between the date of this hearing and the date of the Preliminary Injunction hearing." Press Exh. 14, pages 1-2.

71. By order of January 2, 1991, this ruling was extended until "the Preliminary Injunction hearing is held and the outcome is determined." Rainbow Exh. 5, page 1. Although in the end it was six months before Judge Marcus ruled on the injunction request, it was all

parties' belief at that time that action would be taken quickly. Tr. 759.

72. Four months after imposition of the status quo order, on March 27, 1991, Gannett Vice President Rick Edwards wrote Press President Robert McAllen that:

I have been told in clear language that if Bithlo Tower Company proceeds in any way with Press that we will be in violation of a court order. . . .

Bob, believe me when I tell you that every resource we have to proceed has been tried, we cannot force the judge.

Rainbow Exh. 7, page 17.

73. While the court's status quo order by its terms ran to Gannett, it was clear to both Rainbow and its counsel that "Rainbow could not go into that property and build on its own," Tr. 735, because "according to the terms of the lease Rainbow cannot construct without the landlord," Tr. 732. Some of the lease provisions making this preclusion clear were identified by Joseph Rey. Tr. 734.

74. Article IV, Section (c) of the lease, entitled "Landlord's Construction", provides that "Landlord will construct for tenant an addition to the transmitter building generally in accordance with Exhibit B hereto" and that "Tenant will provide landlord with name and references of a preferred contractor to perform the con-

struction work. Landlord's approval shall not be unreasonably withheld." Rainbow Exh. 6, page 6. Likewise, Article II, Section (b) recites that "Landlord will be constructing an addition in which tenant will occupy an exclusive area to house its transmitting equipment."

Rainbow Exh. 6, page 4.

75. On January 25, 1991, Rainbow filed its fifth extension request, reporting on its status and the litigation as follows:

Upon denial of rehearing by the Supreme Court, Rainbow engaged engineering services to undertake construction of the station. Actual construction has been delayed by a dispute with the tower owner which is the subject of legal action in the United States District Court for the Southern District of Florida (Case No. 90-2554 CIV MARCUS). A Motion for Preliminary Injunction was heard on January 11, 14 and 16, 1991 and is scheduled to conclude on January 23, 1991, with a decision anticipated shortly thereafter.

Rainbow anticipates that its exclusive right to the use of the tower aperture will be recognized by the District Court. Rainbow is ready, willing and able to proceed with construction upon a ruling from the District Court and anticipates completion of construction within 24 months of a favorable Court action.

Joint Exh. 2, page 3.

76. On June 6, 1991, the Florida district court denied Rainbow's preliminary injunction request. Stip. 16. The litigation on the merits went forward until the summer of 1993, Tr. 986, when a settlement was reached whereby the landlord paid Rainbow a substantial sum of

money and Rainbow gave the consent it had withheld since 1988 to allow another antenna in its 1500 foot aperture, Tr. 995.

77. Denial of the preliminary injunction dissolved the status quo order and "Rainbow picked up where it had left off" prior to the litigation, Tr. 740, going forward with the three room construction at the tower for its transmitter room. Rainbow Exh. 7, pages 18, 19; Tr. 741. Construction of the transmitter building was completed in November 1991. Tr. 741.

78. Sixth Extension Request. On June 25, 1991, Rainbow filed its sixth extension request, reporting on its status and the litigation as follows:

Upon denial of rehearing by the Supreme Court, Rainbow engaged engineering services to undertake construction of the station. Actual construction has been delayed by a dispute with the tower owner which is the subject of legal action in the United States District Court for the Southern District of Florida (Case No. 90-2554 CIV MARCUS). A Motion for Preliminary Injunction was denied by the Court on June 6, 1991.

Immediately upon denial of the preliminary injunction, Rainbow notified the tower owner of its intention to commence construction (a copy of the letter to Guy Gannet Tower Co. is appended hereto) and requested that the lease provision regarding construction bids be effectuated. In addition, Rainbow has initiated discussions with equipment manufacturers regarding construction specifications and intends to place its equipment order as soon as the building construction schedule is finalized.

Rainbow will commence operation prior to December 31, 1992, as it previously informed the Commission.

Joint Exh. 3, page 3.

79. Rainbow's fifth extension expired on August 5, 1991. Stip. 14. Rainbow did not then go forward with actual station construction because it did not a valid construction permit, which the Conant loan required. Tr. 742. At that time Rainbow's construction permit "was pending, and the deal with him was that it was free and clear, and that was not free and clear." Tr. 742. In any case, Rey said building the transmitter building when the permit was uncertain was "a \$60,000 gamble with my money, but I am not going to risk a penny of Howard's money." Tr. 742.

80. Upon grant of the assignment to Rainbow Broadcasting Limited and the sixth extension request in summer of 1993, Rainbow "immediately picked up where we had left off in 1991. By now we had the transmitter building already built. So we went ahead and revisited equipment, bought equipment, and installed it, and eventually when the FCC allowed us we went on the air in June of 1994." Tr. 742-743. There was no question in Joseph Rey's mind but that Rainbow could have completed construction within 18 months. Tr. 981. In fact, its actual construction in 1993 was completed in seven and a half months. Tr. 981-982. Thus, Rainbow clearly could have built the station

and commenced operation by December 31, 1992 as it told the Commission in its sixth extension request.

Issue 4

81. History of Authorization. Rainbow's application for construction permit was filed in September 1982, Stip. 1, and its original construction permit was granted in October 1985, Stip. 2. Notwithstanding the fact that appeals were filed in the United States Court of Appeals for the District of Columbia Circuit in November 1985, Stip. 3, Rainbow was issued a construction permit on April 22, 1986, Stip. 4, thus technically triggering the 24 month period for construction specified in Section 73.3598(a).

82. One year later, in November 1986, when the case had been briefed and was awaiting oral argument, the Court remanded the case at the Commission's request as part of its minority preference policy review and rule-making. Stips. 5-6. Rainbow's grant was held in abeyance from that time until the case returned to the Court of Appeals on June 9, 1988, Stip. 7, where the decisional process went forward after rebriefing. On June 23, 1988, the Commission reinstated Rainbow's construction permit. Stip. 6. The Court of Appeals affirmed Rainbow's grant on April 21, 1989. Stip. 9. A petition for certiorari

was filed with the United States Supreme Court on September 20, 1989.

83. During the pendency of the Supreme Court proceeding between September 20, 1989 and August 30, 1990, Rainbow was required to continue filing, and the Commission promptly granted, Form 307 extension requests every six months. Rainbow was assured by the F.C.C. staff, however, that while the filing requirement was a necessary formality, the permittee would be afforded the normal 24 month construction period after the completion of judicial review. Tr. 757-757, 806-808.

84. By the time the Supreme Court acted, four such extensions had been filed-- on July 11, 1988; May 10, 1989; November 17, 1989; and July 2, 1990. Stip. 8. Rainbow had held its construction permit from October 1985 until August 1990, some 58 months "from the date of issuance." Notwithstanding the length of time from initial issuance, Rainbow's January 25, 1991 request for a fifth extension of time to construct was granted on February 5, 1991. Stips. 13-14.

85. Ten months after completion of Supreme Court review, on June 25, 1991, Rainbow filed its sixth request for extension. Stips. 10, 17. No action was taken on that application until two years later, when it was

denied by staff letter dated June 18, 1993. Stip. 24. That letter was subsequently reconsidered and reversed by action of the Chief, Mass Media Bureau, dated July 3, 1993, Joint Exh. 9, which was affirmed by the Commission on May 23, 1994, Joint Exh. 10. Rainbow commenced station operation on June 6, 1994.

86. Between the time of the Supreme Court's denial of rehearing on August 30, 1990 and the grant of the extension, Joseph Rey calculated that Rainbow had a valid construction permit and was not subject to Judge Marcus' status quo order for approximately four and one half months broken into two periods-- September, October and November of 1990, and from June 6, 1991 until expiration of the fifth extension in July 1991. Tr. 743-744.

87. Length of Initial Construction Period. It was Joseph Rey's understanding at the time the Supreme Court acted in 1990, based both on his general knowledge and a specific conversation with counsel, that Rainbow would have two years from that time to construct. Tr. 756-757. In 1988, when Rainbow's permit had been in effect for two years, it was cancelled for failure to construct. Tr. 757, 806. Counsel told Rey "not to worry," that "somehow they got confused. They don't realize the comparative proceeding is still in the Court of Appeals We

will just write them back, point it out to them, and we will get it reinstated, and don't worry about it." Tr. 806-807.

88. Rainbow argued to the Commission "that we should have our two years after final grant," Tr. 757, that the "two-year clock should have begun whenever the proceeding ended, whether it ended in the Court of Appeals or the Supreme Court, as it did," Tr. 807, 808, but "Mr. Oppenheimer, to the best of my recollection, said no, six months at a time, and you will get your two years, but the mechanism is six month extensions." Tr. 757, 808. Oppenheimer told Rainbow's counsel that they should "just put" extensions in every six months "and they will be granted right away. And so they were. Within weeks of filing for an extension, the first one in '88, all the way through until [Press] started objecting" Tr. 807.

89. Rey "always thought that we would get two years from final grant," Tr. 757, and "I was blown away that the one filed in [June '91] took two years and then it got yanked. [M]y understanding was that we had two years to build from August 30th of 1990." Tr. 807. In 1994, when the "station [was] already built and ready to go on

the air," the "Commission finally agreed that we should have had our two years after the fact." Tr. 808.

PROPOSED CONCLUSIONS OF LAW

Issue 2

1. This issue seeks to determine whether Rainbow's filings to the Commission in connection with the fifth and sixth applications for extension of time made misrepresentations of fact or were lacking in candor concerning the permittee's financial qualifications in violation of Sections 1.17 and 73.1015 of the Commission's rules, which require truthful written filings with the Commission. The only representations related to financing in either extension application were Rainbow's "YES" response to Question 8 on both extension applications, "Are the representations contained in the application for construction permit still true and correct?"; and the representation in Exhibit 1 to the January 25, 1991 fifth extension request that "Rainbow is ready, willing and able to proceed with construction upon a ruling from the District Court "4/

4/ While these Proposed Findings and Conclusions have addressed both the fifth and the sixth extension requests, only the fifth is in issue: The Commission designated the financial misrepresentation issue "pursuant to the Court's decision," *Designation Order*, paragraph 1, and the Court's remand on this issue involved

2. Disqualification under a financial misrepresentation issue requires "findings that specific statements of material fact were deliberately misrepresented or that the applicant concealed specific information." **Georgia Public Telecommunications Commission**, 7 F.C.C. Rcd. 2942, 2948 (Rev. Bd. 1992). The evidence establishes that Rainbow's statements to the Commission about its financing were completely accurate when made and remained accurate, obviating any question of misrepresentation or concealment.

3. Starting in the mid-1980's, Rainbow relied upon Chicago businessman Howard Conant for financing, Finding 26, and that commitment remained intact until 1993, when the assignment to the limited partnership took place. Findings 35, 55. The terms were the same throughout: Conant would lend Rainbow \$4 million to be repaid in equal monthly installments over a five year period at 2% over Continental Bank prime rate. Conant was to get 50% of the station's net cash flow for the first five years of station operation, decreasing to 25% after five years, and if the station were sold during that period, Conant would receive 10% of the net sales price. If the station were sold before five years, Conant had a security inter-

only the fifth extension request, *Press Broadcasting Company v. F.C.C.*, 59 F.3d 1365, 1371 (D.C. Cir. 1995).

est in the assets, junior only to an equipment supplier's interest. Rainbow's principals also personally guaranteed the loan. Finding 26.

4. The Rainbow/Conant loan agreement grew out of a long personal and business association between Joseph Rey, Rainbow's 90% general partner, and Howard Conant. They knew each other for more than 15 years, Finding 17, and were both closely associated with Station WDZL(TV), Miami, in the 1980's, when Rey was Sales Manager and Conant the financial backer and limited partner. Findings 20-22. In that capacity, Rey became intimately familiar with Conant's financial status and Conant became well acquainted with Rey's abilities as a businessman and an "effective, convincing, knowledgeable executive." Findings 23-25.

5. While the loan commitment was oral, both Rey and Conant understood that the deal would be put in writing when the money was actually disbursed. Conant testified that this mode of operation was not unusual for him and he had made many substantial business deals on oral understandings. Rey was aware of Conant's manner of doing business and knew that a handshake was all that was necessary to seal a deal with him. Findings 29-31. While the agreement was oral, it was not casual. Before